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24498 7590 05/24/2010 Robert D. Shedd, Patent Operations THOMSON Licensing LLC P.O. Box 5312 Princeton, NJ 08543-5312				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEVEN BRIAN ROSKER and CHARLES TODD SINGER

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Appeal 2009-005494  
Application 10/525,921  
Technology Center 2100

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Decided: May 24, 2010

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Before ST. JOHN COURTENAY III, CAROLYN D. THOMAS, and  
STEPHEN C. SIU, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-16. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is illustrative:

1. A storage system, comprising:
  - a storage mechanism for storing content; at least one local cache storage unit for mirroring at least a portion of the content stored on the storage mechanism;
  - a write director coupled to the storage mechanism and to the at least one local storage cache for controlling content written into the storage mechanism and to the at least one local storage cache;
  - a cache manager for managing content copying between the storage mechanism and the at least one local storage cache to maintain at least partial content coherency;
  - a read director responsive to a request for content from a user for directing said content request to a selected one of the at least one local storage cache and the storage mechanism depending on content availability of each; and
  - a storage mechanism access manager for monitoring read and write loading of the storage mechanism and for controlling the read and write directors and the cache manager in accordance with the storage mechanism read and write loading, wherein controlling the write directors includes reducing writing to the storage mechanism.

Appellants appeal the following rejections:

1. Claims 1, 2, 4-12, and 15-16 under 35 U.S.C. § 102(e) as anticipated by Chiou (US 6,792,507, Sep. 14, 2004).
2. Claims 3, 13, and 14 under 35 U.S.C. § 103(a) as unpatentable over Chiou and Tremblay (US Patent Pub. 2002/0184460, Dec. 5, 2002).

## ISSUE

Under §102 did the Examiner err in determining that Chiou discloses reducing writing to the storage mechanism in accordance with the monitored storage mechanism read and write loading? (Claim 1).

## FACTUAL FINDINGS

1. Chiou discloses two options with respect to cache update or invalidation: 1) a critical coherent mode, wherein the caches are updated before the write request is forwarded; and 2) a non-critical coherent mode wherein the data is written to the target device first and then the cache is updated or invalidated. (Col. 15, ll. 3-7).

2. Chiou discloses that the user chooses between the two options based on the user's configuration. (Col. 9, ll. 22-24).

## ANALYSIS

Appellants argue that Chiou does not disclose reducing the writing to a storage mechanism in accordance with monitored read and write loading on the storage mechanism. (Reply Br. 5.) We agree.

The Examiner contends that “‘in accordance with the storage mechanism read and write loading’ is not a limitation whereby requiring the manager to act ‘in accordance with the monitored read and write loading.’” (Ans. 16). We disagree. We find that the Examiner's construction of the aforementioned limitation is unreasonably broad in light of the express language of the claim.

*Cf.* “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)) (underline added).

Here, we find the element “*the* storage mechanism read and write loading” (recited in line 14 of claim 1) derives antecedent basis from the element “monitoring read and write loading of the storage mechanism” recited in line 12 of claim 1. (See claim 1). Therefore, contrary to the Examiner’s contention, the claimed “reducing writing to the storage mechanism” is associated with the monitored read and write loading of the storage mechanism.

Assuming *arguendo* that Chiou discloses reducing the writing to the storage device by reversing the order in which data is written to the cache and storage mechanism, (*cf.* FF 1), we find that the reduction of writing to the storage mechanism in Chiou is based on the user’s configuration (FF 2), and is not associated with the *monitored read and write loading of the storage mechanism* within the meaning of Appellants’ independent claims.

As noted by Appellants, (Reply Br. 6), we do not find, nor has the Examiner established, that Chiou discloses or describes this limitation in accordance with the above construction. We further note that independent claim 11 recites similar limitations. Therefore, our construction of claim 1 is similarly applicable to claim 11.

Based on the record before us, we find that the Examiner erred in rejecting independent claims 1 and 11. Accordingly, we reverse the rejections of claims 1 and 11, as well as associated dependent claims 2-10 and 12-16.<sup>1</sup>

### DECISION

We reverse the Examiner's § 102 and § 103 rejections.

### ORDER

### REVERSED

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<sup>1</sup> As noted above, dependent claims 3, 13 and 14 are rejected under §103 as unpatentable over Chiou and Tremblay. We do not find, nor has the Examiner established, that Tremblay cures the deficiencies of Chiou discussed above. Accordingly, the §103 rejections are reversed on the same grounds as for claims 1, 2, 4-12, 15 and 16, as discussed *supra*.